

# **Indiana Judicial Conference**

## **April 2006**



### **RECENT DEVELOPMENTS IN INDIANA EVIDENCE LAW**



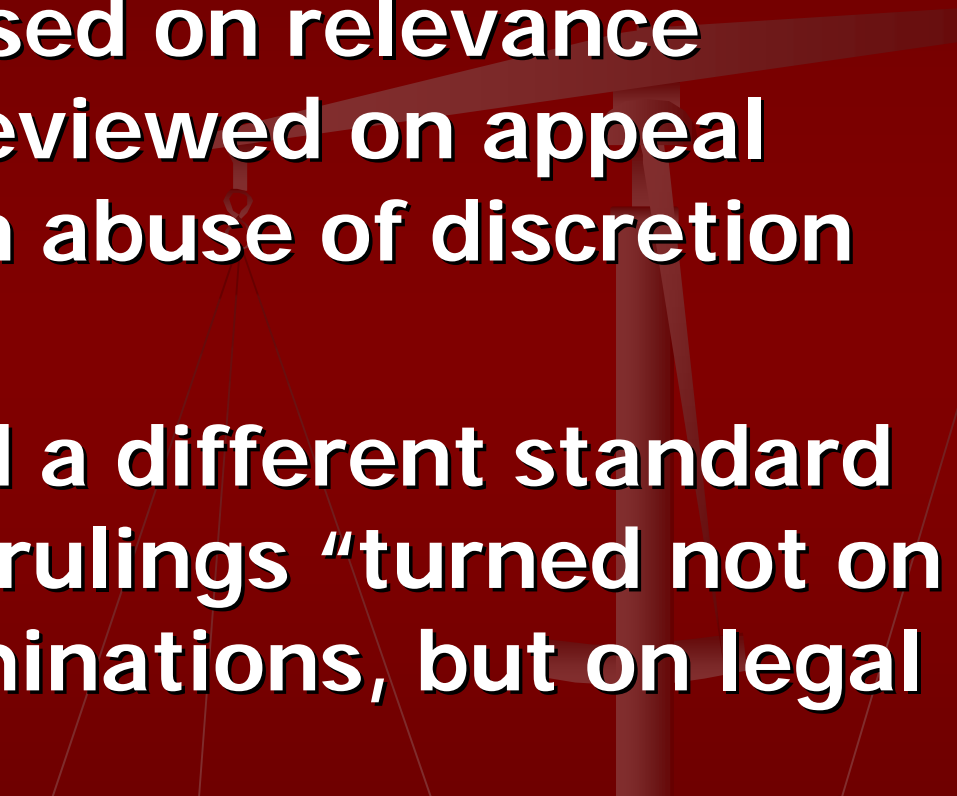
# **Relevance, Balancing Prejudice, and Special Rules of Relevance**

# **Houser v. State, 823 N.E.2d 693 (Ind. 2005)**

- Relevance under 401 is the “easier” question, with the more difficult question being whether the evidence was offered to prove the character of the defendant in violation of Rule 404(b) or whether the probative value of the evidence was substantially outweighed by the dangers enumerated in Rule 403

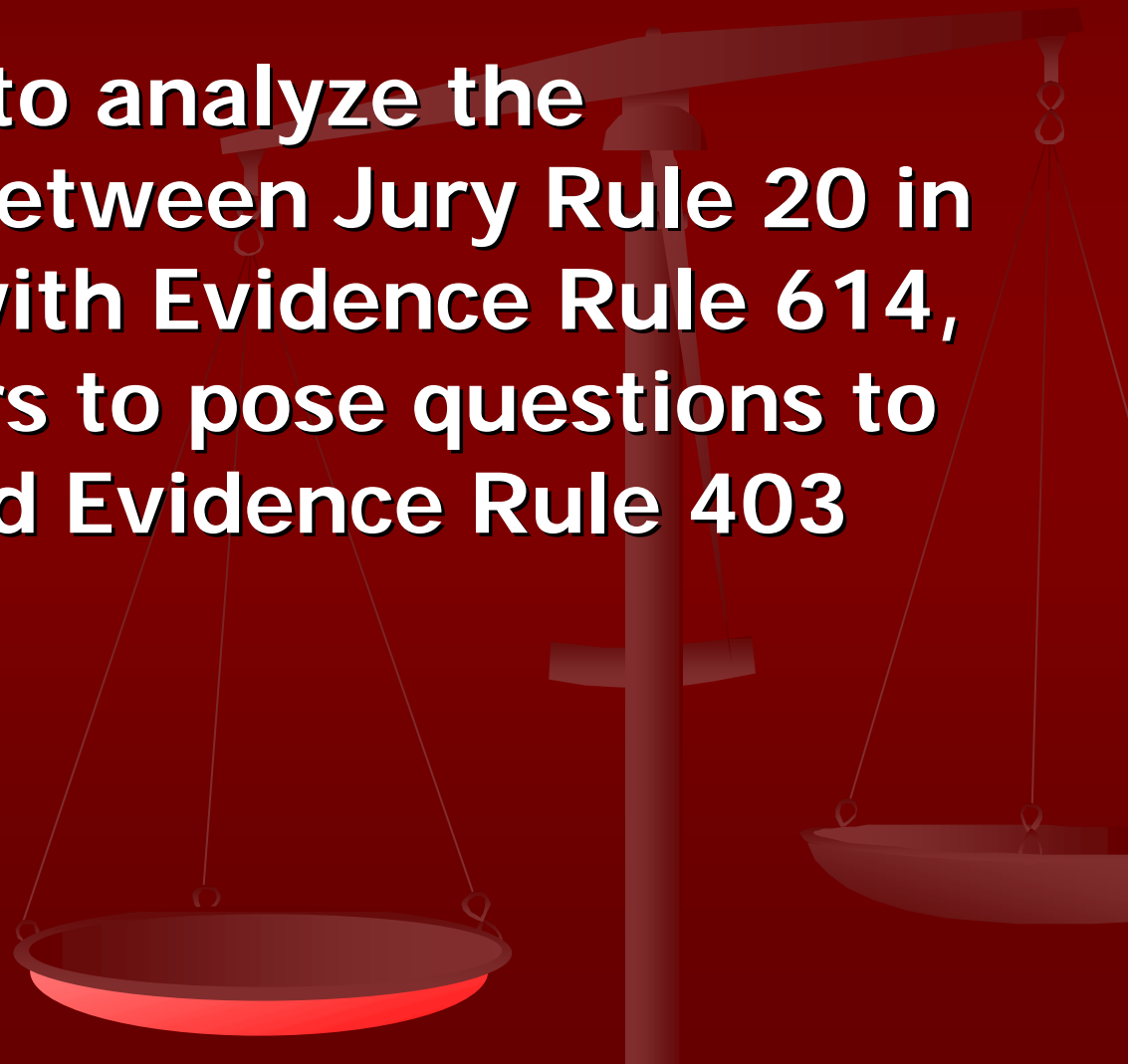
# **Candler v. State, 837 N.E.2d 1100**

## **(Ind. Ct. App. 2005)**

- **Objections based on relevance grounds are reviewed on appeal based upon an abuse of discretion standard**
  - **Query: should a different standard apply if those rulings “turned not on factual determinations, but on legal conclusion?”**
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# **Burks v. State, 838 N.E.2d 510** **(Ind. Ct. App. 2005)**

- Court asked “to analyze the intersection between Jury Rule 20 in conjunction with Evidence Rule 614, allowing jurors to pose questions to witnesses, and Evidence Rule 403 and 404(b).”



# Burks, cont'd

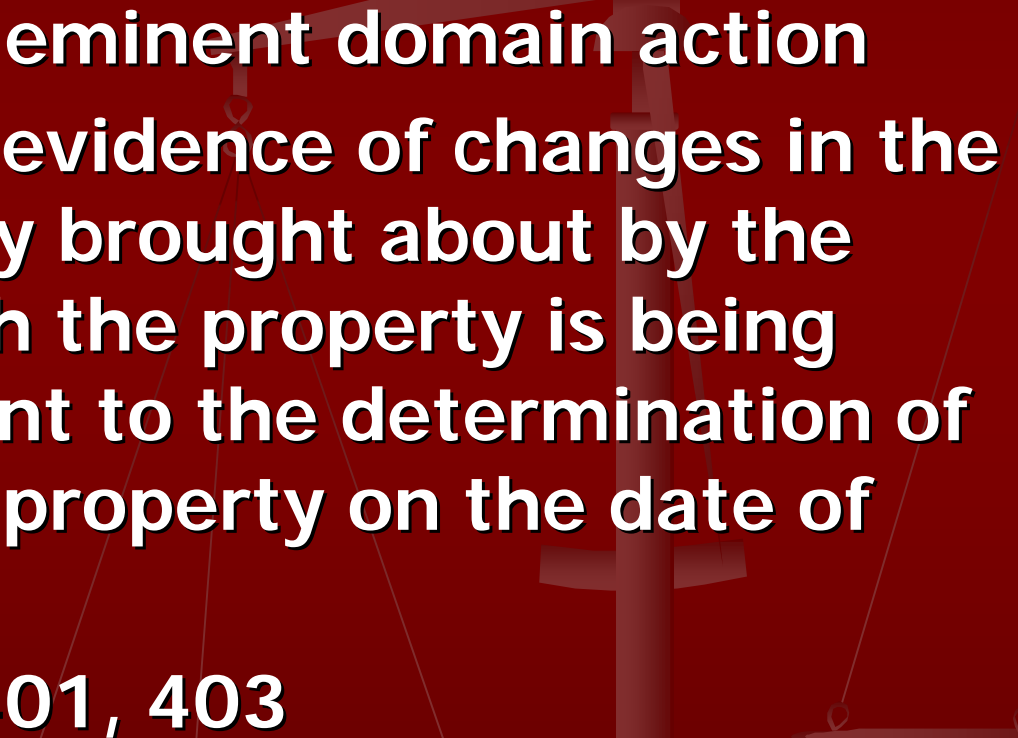
- From Trotter,
- “We do not mean to say that every juror question which leads to the discovery of the truth or aids in the understanding of the evidence must be submitted. Not only must the answer clarify evidence for the jury but it also must be admissible under our rules of evidence.”
- From Burks
- “Thus, questions propounded by jurors are entitled to no less scrutiny under our rules of evidence than those propounded by parties. Arguably, the two filters [from Ashba] built into the procedure subject juror questions to additional scrutiny.

# **Gasper v. State, 833 N.E.2d 1036 (Ct. App. Ind. 2005)**

- **An objection based on relevance does not preserve the issue of the chain of custody for appeal**



# South Town Properties vs. City of Fort Wayne, 840 N.E.2d 393 (Ind. Ct. App. 2006)

- Relevance in an eminent domain action
  - Rule of Sovich - evidence of changes in the value of property brought about by the project for which the property is being taken is irrelevant to the determination of the value of the property on the date of condemnation
  - Effect of Rules 401, 403
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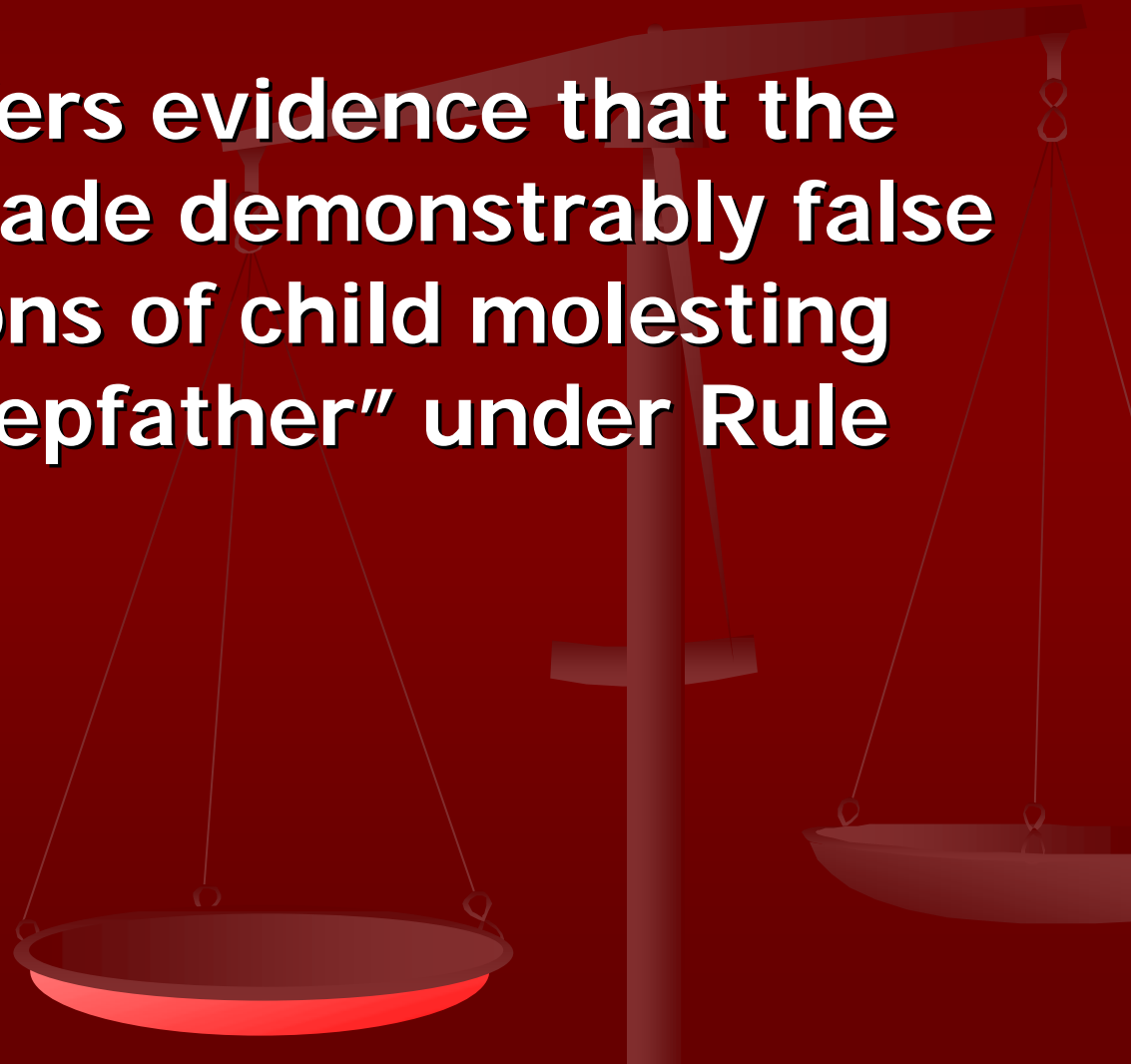


# Special Rules of Relevance



# **Candler v. State, 837 N.E.2d 1100** **(Ind. Ct. App. 2005)**

- Defendant offers evidence that the victim “had made demonstrably false prior allegations of child molesting against her stepfather” under Rule 412

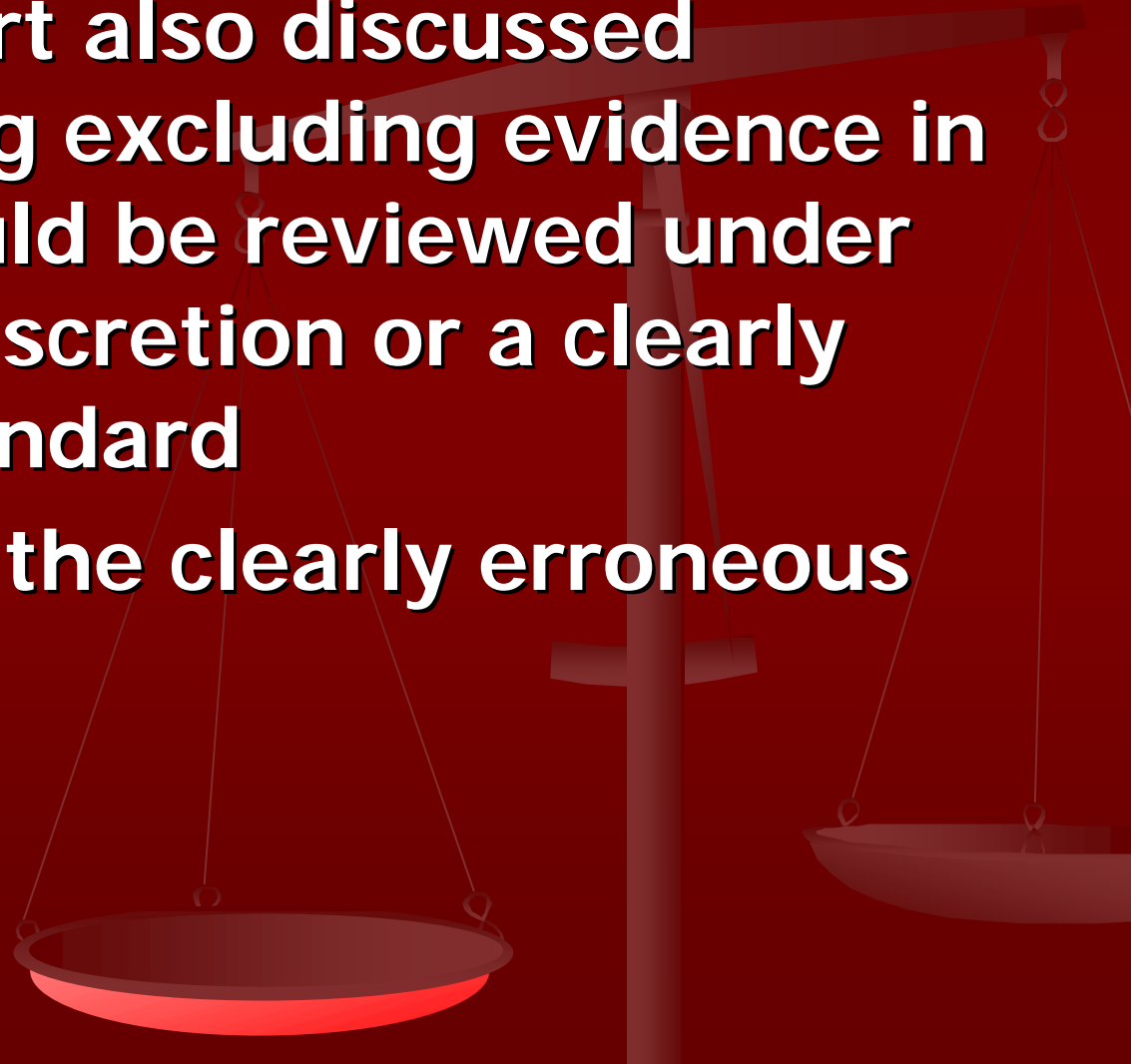


# Candler, cont'd

- Under 412, four specific exceptions to the exclusion of evidence about the past sexual conduct of a victim or witness
- Common law exception, which has survived the 1994 adoption of the Indiana Rules of Evidence, provides that evidence of a prior accusation of rape is admissible if: (1) the victim has admitted that his or her prior accusation of rape is false or (2) the victim's prior accusation is demonstrably false.

# Candler, cont'd

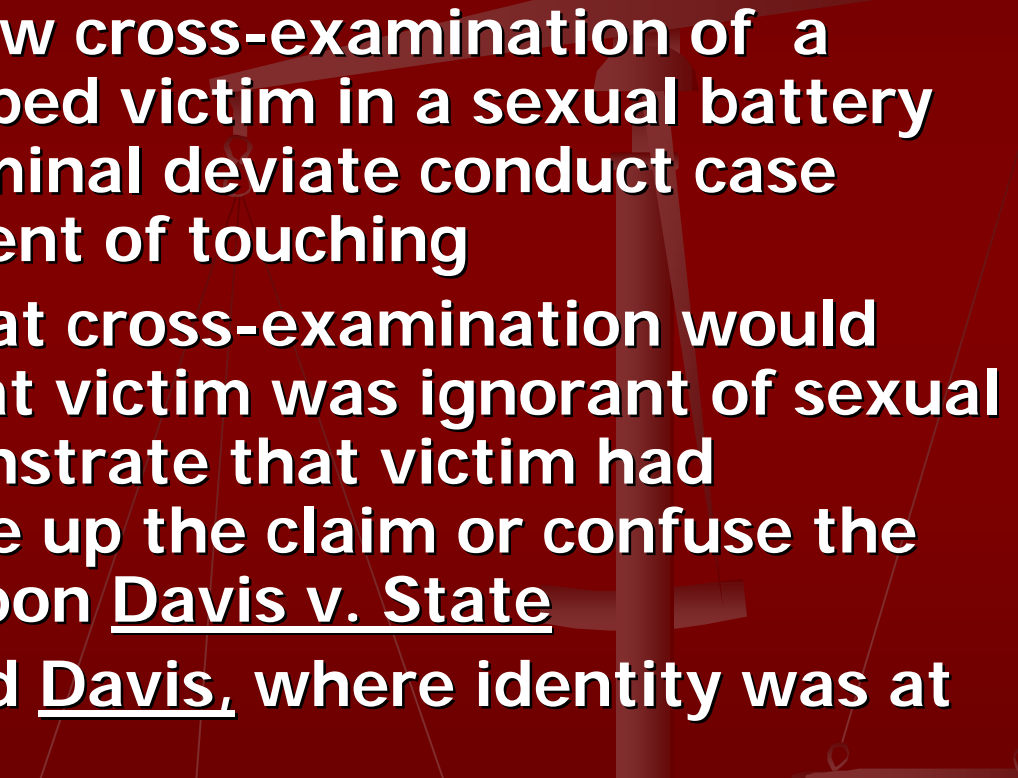
- Appellate court also discussed whether ruling excluding evidence in this case should be reviewed under an abuse of discretion or a clearly erroneous standard
- Court applied the clearly erroneous standard



Although these standards of review have been treated the same, the clearly erroneous standard appears semantically to be more correct than the abuse of discretion standard when applied to factual determinations of the trial court.

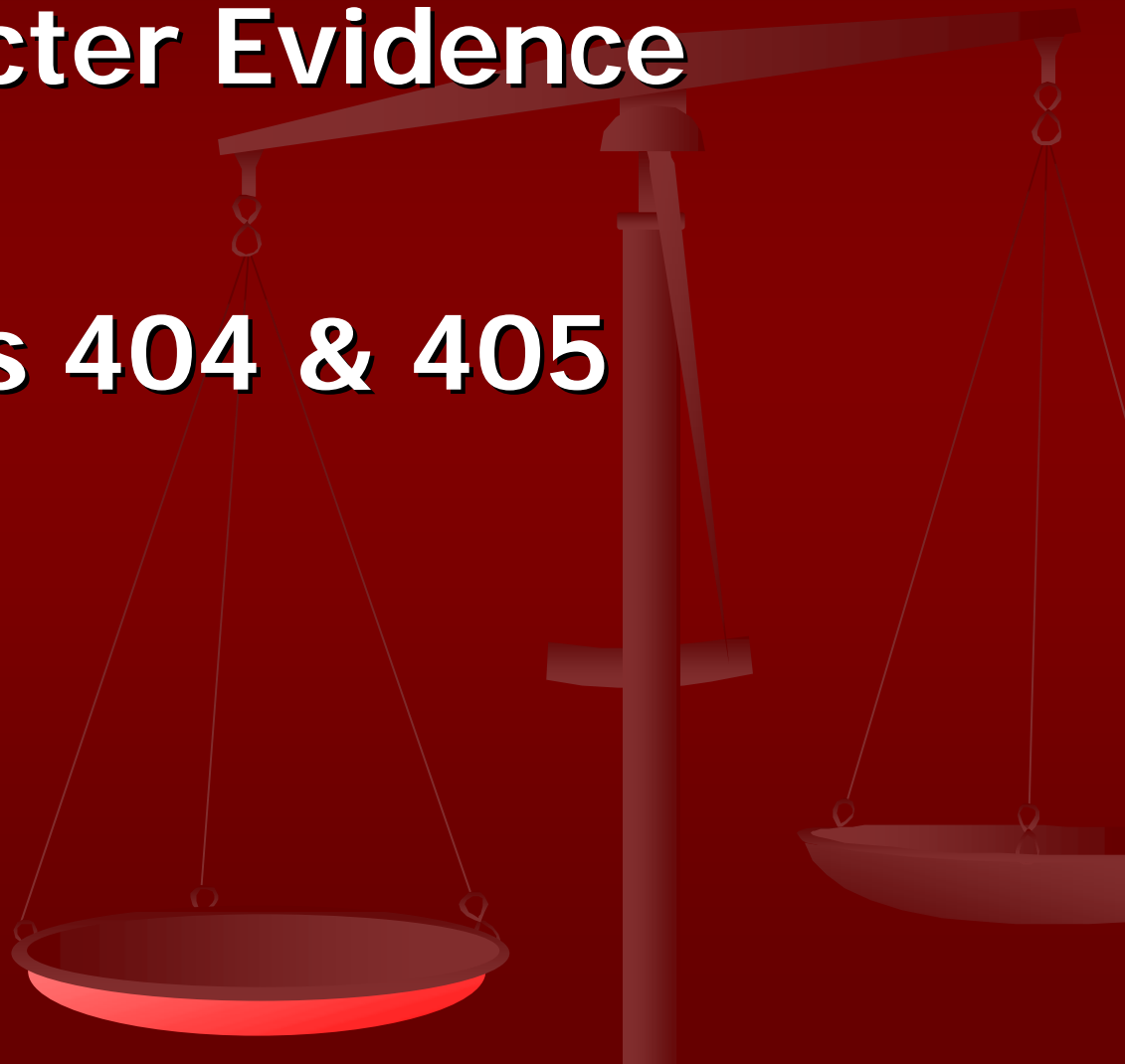
[I]n a case involving factual findings: "Trial courts do not, however, have "discretion" to make findings. Rather, trial courts are to use their best judgment to arrive at the correct result. They are bound by the law and the evidence and it is usually an error, not an "abuse" if the appellate court disagrees. Trial courts must of course exercise judgment, particularly as to credibility of witnesses, and we defer to that judgment because the trial court views the evidence first hand and we review a cold documentary record. Thus, to the extent credibility or inferences are to be drawn, we give the trial court's conclusions substantial weight. But to the extent a ruling is based on an error of law or is not supported by the evidence it is reversible, and the trial court has no discretion to reach the wrong result.

# **Morrison v. State, 2005 Ind. App. LEXIS 518 (March 31, 2005)**

- Not error to disallow cross-examination of a mentally handicapped victim in a sexual battery and attempted criminal deviate conduct case about a prior incident of touching
  - Defense argued that cross-examination would rebut inference that victim was ignorant of sexual matters and demonstrate that victim had knowledge to make up the claim or confuse the incident, relying upon Davis v. State
  - Court distinguished Davis, where identity was at issue
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# Character Evidence

## Rules 404 & 405

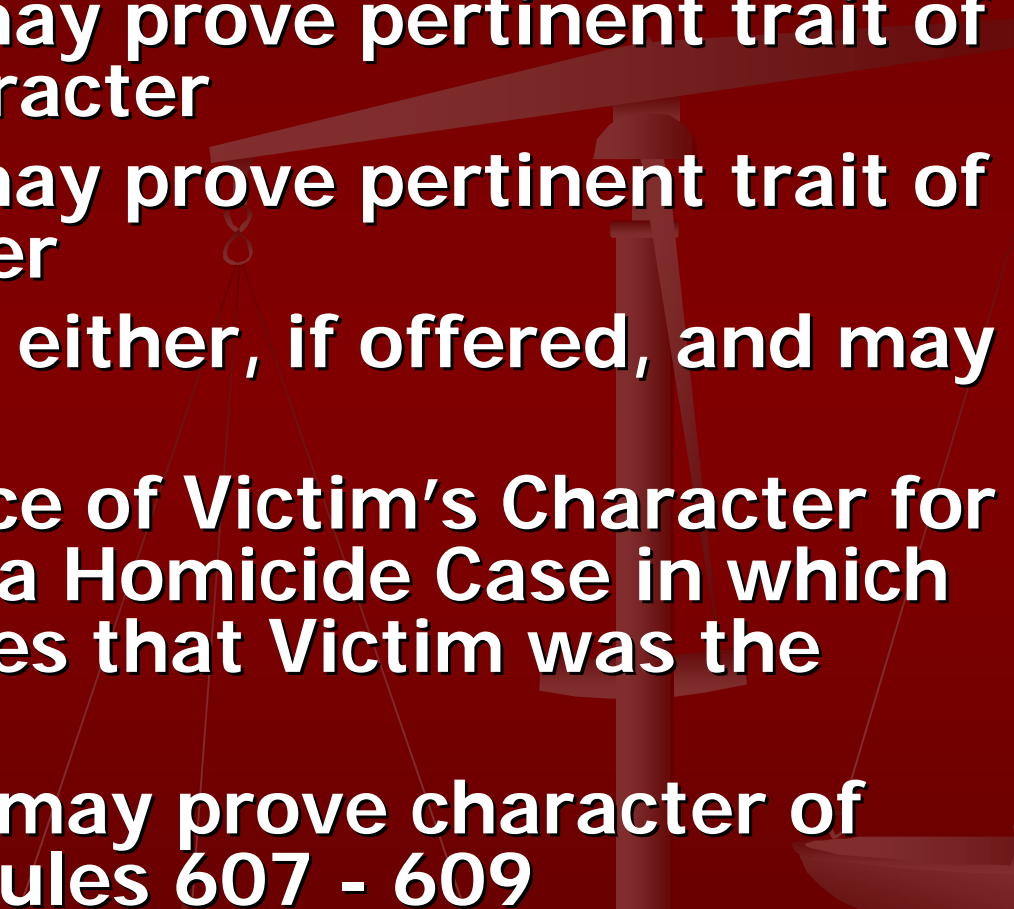


# Rule 404

- Character evidence, for the purpose of proving conduct in conformity therewith (i.e., propensity evidence) is presumptively inadmissible
- Exceptions under 404(a) allow the “defendant” in a criminal case to allow character evidence in limited circumstances, subject to the State’s ability to rebut the evidence



# Exceptions to Exclusion under Rule 404(a)

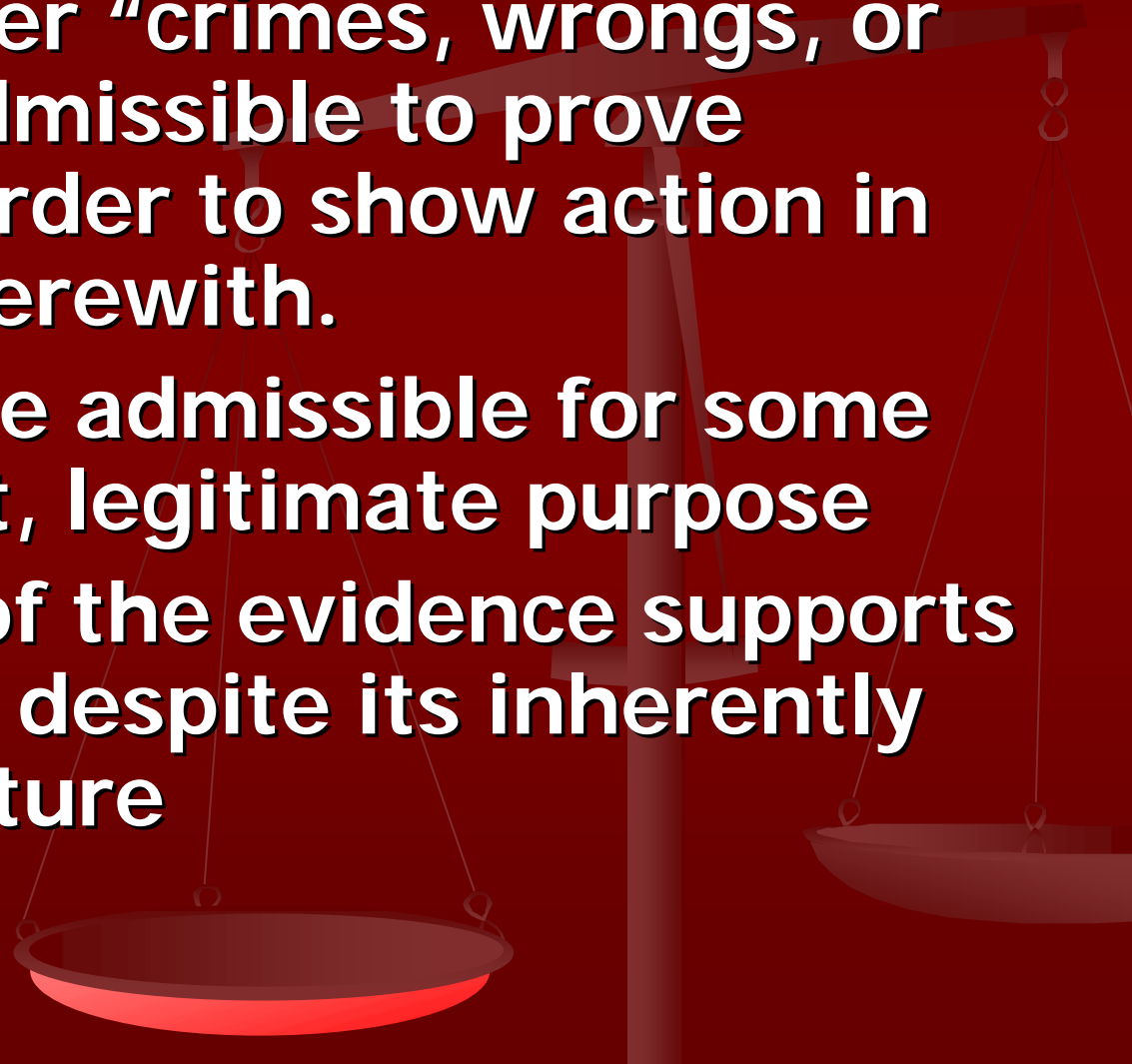
- (1) Defendant may prove pertinent trait of defendant's character
  - (2) Defendant may prove pertinent trait of victim's character
  - State may rebut either, if offered, and may also
  - (2) offer evidence of Victim's Character for Peacefulness in a Homicide Case in which Defendant alleges that Victim was the First Aggressor
  - (3) Either party may prove character of witness under Rules 607 - 609
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# Evidence Offered Under 404(b)

Evidence of other “crimes, wrongs, or acts” is not admissible to prove character in order to show action in conformity therewith.

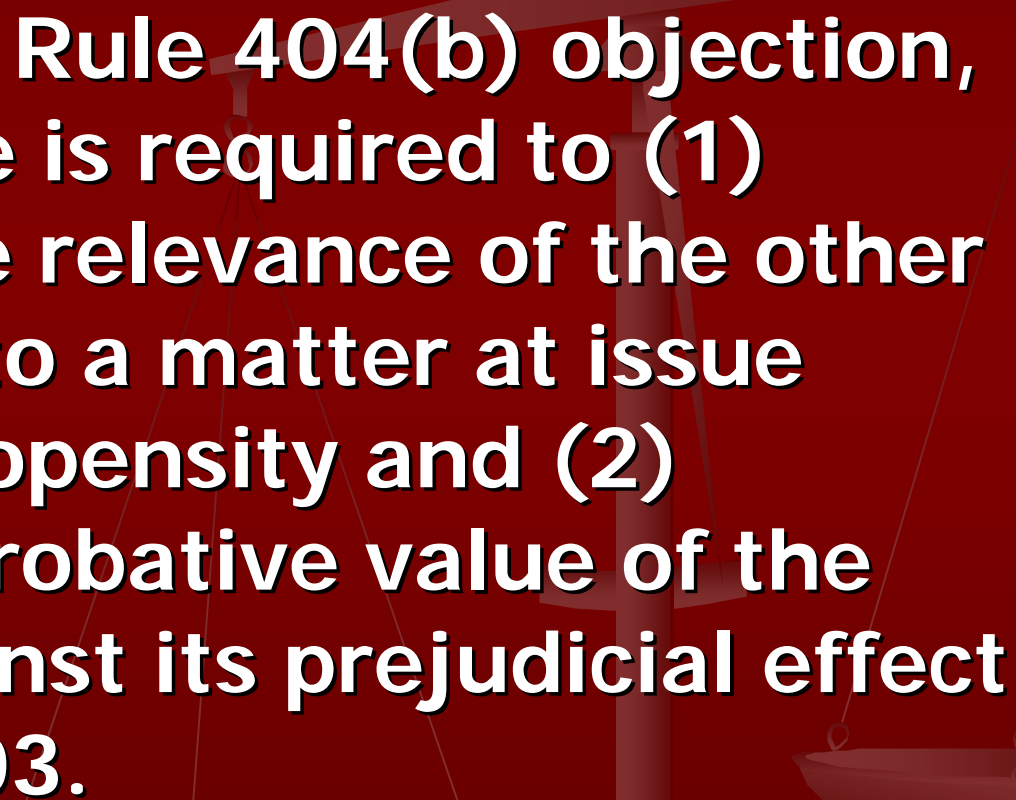
Evidence may be admissible for some other relevant, legitimate purpose

Probativeness of the evidence supports its admission, despite its inherently prejudicial nature



# **Analysis of Evidence offered under Rule 404(b)**

**In ruling on a Rule 404(b) objection, the trial judge is required to (1) determine the relevance of the other act evidence to a matter at issue other than propensity and (2) balance the probative value of the evidence against its prejudicial effect under Rule 403.**



# Welch v. State, 828 NE.2d 433 (Ind. Ct. App. 2005)

- Evidence offered by defendant under Rule 404(a)(2) and under self-defense statute
- Relied upon Brand v. State in which the appeals court contrasted “evidence offered to prove that a person acted in conformity with their character with evidence used to ‘offer a glimpse into a defendant’s mind at the time he acted in self-defense.’”

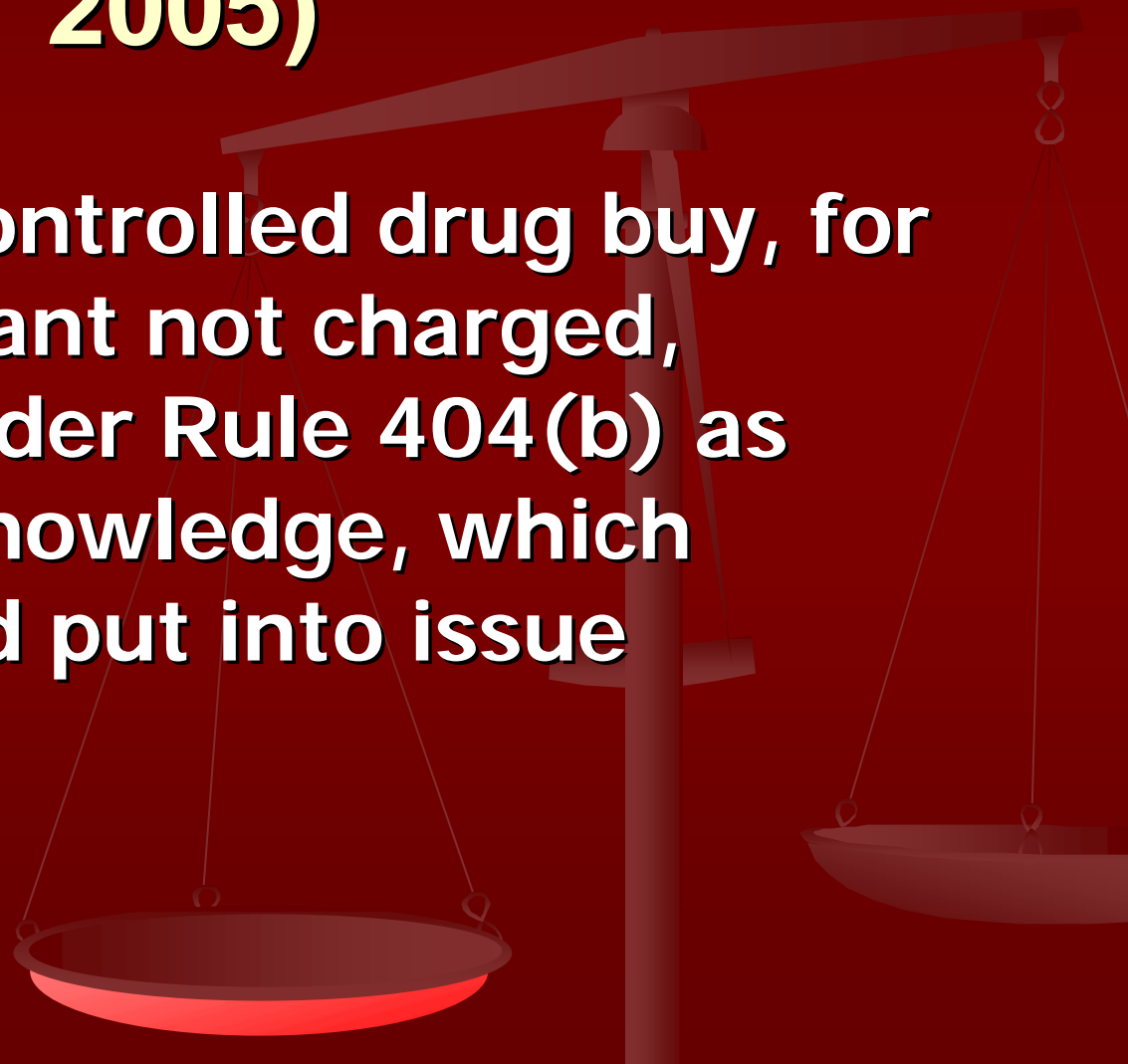
# **Guillen v. State, 829 N.E.2d 142**

## **(Ind. Ct. App. 2005)**

- Defendant offered evidence of specific instances of the victim's prior acts of reckless behavior while intoxicated as "character" under Rules 404(a)(2) and 405, but not under Rule 404(b)
- Rule 405(a) does not allow evidence of specific instances of conduct
- Rule 405(b) does not apply under defense theory that instances were an essential element of defense that defendant did not hit the victim."

# **Samaniego-Hernandez v. State,** **839 N.E.2d 798 (Ind. Ct. App.** **2005)**

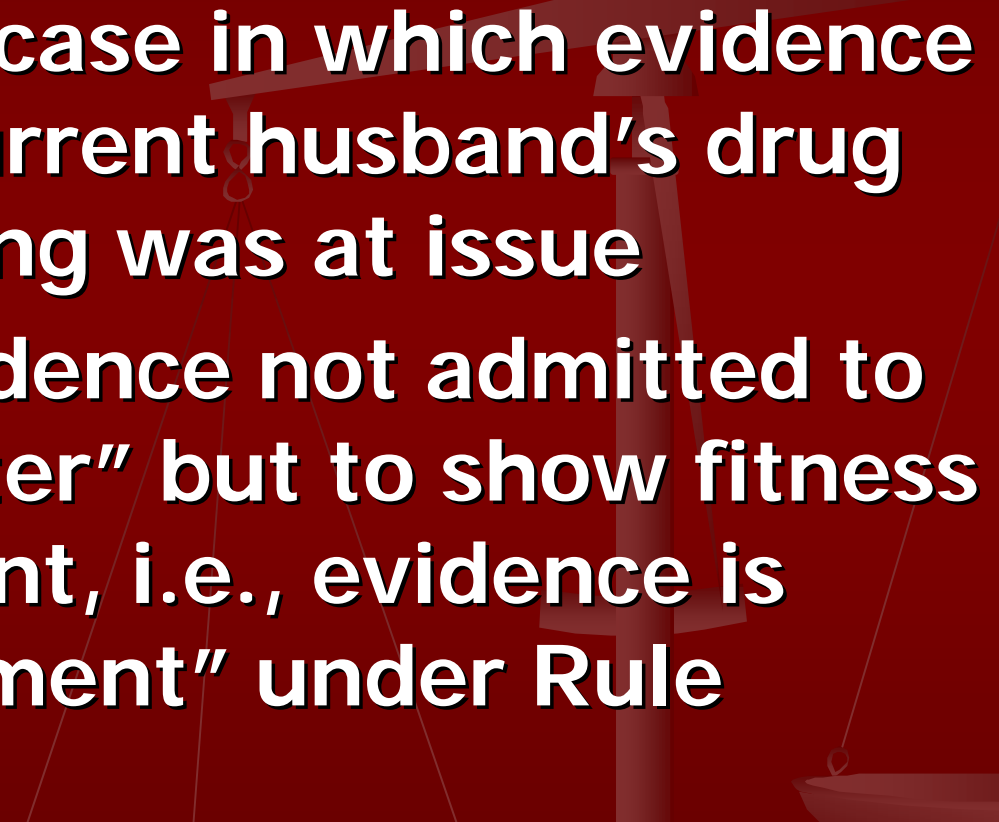
- Evidence of controlled drug buy, for which defendant not charged, admissible under Rule 404(b) as evidence of knowledge, which defendant had put into issue



# Methods of Proof under Rule 405

- (a) Type of evidence - reputation, opinion, inquiry into specific instances on cross-exam
- (b) “In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense” proof by specific instances of conduct

# Leisure v. Wheeler, 828 N.E.2d 409 (Ind. Ct App. 2005)

- Child custody case in which evidence of mother's current husband's drug use and stealing was at issue
  - Court said evidence not admitted to show "character" but to show fitness as a step parent, i.e., evidence is "essential element" under Rule 405(b)
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# Leisure, cont'd

- 'If a person's character is an issue in the case, character evidence has independent relevance and is not offered for the prohibited purpose of showing conforming conduct. We have previously said that a person's character may be a material fact in deciding who should have custody of children as fitness to provide care is of paramount importance. . . . When character has been put in issue by the pleadings as typically occurs in child custody cases, evidence of character must be brought forth. This conclusion is consistent with our common law, which has provided that in civil cases character evidence will be admissible if the nature of the underlying action places a person's character at issue.'

# Other Relevance Cases

- Waldon v. State, 829 N.E.2d 168 (Ct. App. Ind. 2005) – Common-law doctrine of *res gestate* no longer exists; replaced with analysis under Rules 401 and 403

